

marriage, liferenter, and his son fiar, as *successor titulo lucrativo post contractum debitum*, for implement of the said contract of marriage. It was alleged for the defender, That the father could not be convened as successor; because he succeeds to none of his father's heritage but a bare liferent; and his son, oye to the goodsire, could not be convened; because, his father being living, he is not *alioqui successurus*. The Lords found this sort of disposition sufficient to make the father *successor titulo lucrativo post contractum debitum*.

2d MS. Page 6.

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1636. *March 26.* JAMES MOUBRAY *against* DAVID SOMMER.

ALTHOUGH, by the law and practique of this kingdom, if the wife die within year and day after the marriage, not bearing a quick child, the tocher must be restored again to the woman's heirs; yet the expenses bestowed by the husband upon his wife's entertainment, clothing, doctors, and apothecaries, and funeral, should be allowed to the husband, before he be holden to restore the hail tocher.

2d MS. Page 138.

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1636. *March 29.* The EARL of GALLOWAY *against* HARIE GORDON.

THE Earl of Galloway comprises a mill from ————, but takes no infestment, nor yet charges the superior to infest him, for the space of five years after the comprising. His debtor's son, after the comprising, disposes the mill to Harie Gordon of Kilsture, who obtains possession, and uplifts the duties from the tenants by the space of two or three years. In the meantime the Earl of Galloway pursues the tenants to pay their duties to him, and to misken Harie Gordon for the crop 1635. They suspend upon double pouding. Harie Gordon alleges, That he ought to be answered, as having best right, by virtue of his infestment clad with divers years' possession. The Earl of Galloway alleges him to have best right, as having comprised the mill before the other was infest; and the common debtor could make no voluntary disposition in prejudice of him who had comprised the lands before; by the which the disponent was denuded of all right that was in his person. The Lords preferred the infestment clad with possession to the comprising whereupon no infestment nor charge to the superior had followed by the space of five years.

2d MS. Page 37.

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1636. *July 13.* JOHN HALIEBURTON *against* JOHN PATERSON.

HALIEBURTON, minister of Kinneill, having gotten designed to him a croft of land pertaining to Mr John Paterson, and holden by him of a chaplainry; and being charged to remove therefrom, suspends, alleging, That his croft could not be designed for a part of the minister's glebe; because, by Act of Parliament Ja. VI,

Par. 13, cap. 165, first, the vicars', parsons', abbots', friars', priors' lands, and last, all other kirk lands, are appointed to be designed; and he offered him to prove, that there is both priors' and bishops' lands within the parish, which ought first to be designed. To the which it was answered, That the alleged bishops' and priors' lands ly two miles distant from the kirk, and so could not be commodious for the minister. The Lords would not transgress the order set down by the Act of Parliament; but found the reason of suspension relevant.

*2d MS. Page 90.*

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1636. *July 13.* DOCTOR LAMOND *against* BENNET.

DOCTOR Lamond, minister of Markinch,—having designed to him, for a part of his glebe which he wanted, certain yards, and a mire or meadow lying adjacent to the glebe, set in the feu by the vicar,—pursues removing from the said yards and meadow against Bennet, notary in Kirkaldie, heritor thereof. It is alleged by the said Bennet, That he cannot be decerned to remove therefrom; because the same is no arable ground. The Lords repelled the allegeance; because the Act of Parliament makes no mention of arable lands, but of kirklands, Ja. VI, Par. 3, cap. 48.

*2d MS. Page 90.*

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1636. *July 20.* LORD TORTHORRELL *against* The EARL of QUENISBERRIE.

IN an action pursued by the Lord Torthorrell against the Earl of Quenisberrie, the said Earl, defender, craved a protestation, and summoned the pursuer to insist, with certification he should not be heard hereafter. The pursuer takes a day to insist. At the said day the certification is craved, and the pursuer's procurators passed from their compearance. The Lords granted the certification against the pursuer compearing; because he had taken a day to insist, and the nature of this action was such, as it had no other litiscontestation but certification that he should never be heard thereafter.

*2d MS. Page 184.*

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1636. *December 16.* The LAIRD of HAPLAND *against* The TENANTS of HALKET.

THE Laird of Hapland, heritor of the seventh part of the lands of Halket, bruiked by the tenant *pro indiviso*, with the other six parts pertaining heritably to the Laird of Robertland, pursues the tenants to pay him such yearly duties and interest *pro rata*, for his seventh part, as they had paid to Robertland for his other six parts, and to take from him the like tacks or rentals, seeing they bruiked the whole *pro indiviso*. To the which it was answered for the tenants, That the